



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

SEP 21 2004

400 Seventh St., S.W.  
Washington, D.C. 20590

Mr. Ronald J. Stokes  
ExxonMobil Chemical Company  
Intermediates, Synthetics Product Stewardship  
P.O. Box 3140  
Edison, NJ 08818

Reference No. 04-0192

Dear Mr. Stokes:

This is in response to your August 25, 2004 letter concerning the requirements in an interim final rule entitled "Protection of Sensitive Security Information" (69 FR 28066, 5/18/04), issued by the Department of Homeland Security's Transportation Security Administration (TSA) and the Department of Transportation's Office of the Secretary. You asked if these requirements apply to persons that must prepare security plans in accordance with 49 CFR Part 172, Subpart I (§§ 172.800-172.804) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You stated Senior Attorney Astrid Lopez-Goldberg in our Office of Chief Counsel was quoted recently in a publication as saying the new requirements contain sections subject to all modes of transportation, and §§ 172.800-172.804 appear to require the creation of "vulnerability assessments" and, thus, compliance with the interim final rule.

The answer to your question is yes. Persons, as defined in § 171.8, that must comply with the HMR's security plan requirements in §§ 172.800-172.804 participate in actions and the preparation of materials that meet the definition in 49 CFR 15.3 of the interim final rule for a "vulnerability assessment." As a result, these persons must also comply with the interim final rule's requirements in 49 CFR Part 15 to protect sensitive security information.

You also asked if persons required to have a written security plan, as prescribed in § 172.802(b), are required to comply with the protective marking and distribution limitation statement requirements prescribed in § 1520.13, which are repeated in § 15.13. The answer is yes.

I hope this information is helpful.

Sincerely,

Susan Gorsky  
Senior Transportation Regulations Specialist  
Office of Hazardous Materials Standards



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§172.800  
§172.804

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Edmonson  
§172.800-804  
Security Plans  
04-0192  
**ExxonMobil**  
Chemical

August 25, 2004

Mr. Edward T. Mazzullo  
Director, Office of Hazardous Materials Standards  
U.S. DOT/RSPA (DHM-10)  
400 7th Street, S.W.  
Washington, DC 20590-0001

Re: Docket No. TSA-2003-15569; Amendment No. 1520-1  
Protection of Sensitive Security Information

Dear Mr. Mazzullo:

Since the publication of this docket on 18 May 2004 confusion has been prevalent concerning its application to the written security plans requires in §172.802 of 49 CFR. However, in a recent trade publication it stated that "Senior Attorney Astrid Lopez-Goldberg, office of the Chief Counsel for the Research and Special Programs Administration (RSPA), confirmed that the Protection of Sensitive Security Information (SSI) interim final rule contains sections that do apply to all modes of transportation. According to Lopez-Goldberg, 49 CFR 172.800 - 172-804 appears to require the creation of 'Vulnerability assessments' as defined in the SSI IFR, and therefore, the requirements of the SSI IFR would apply".

Is this accurate and do the protective marking & distribution limitation statement requirements in §1520.13 of 49 CFR apply to persons who must have a written security plan pursuant to §172.802?

Please feel free to contact me directly at the above address or numbers shown below should you have questions concerning this request.

Thanks for your consideration in this matter.

Sincerely,

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Liv/IFR-SSI